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BEING

REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS,
THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF
CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

LOH SAIK PEW v. TAN HUAT CHAN

[C.A. (Chua, Choor Singh and Kulasekaram JJ.)
May 4, 1976]

[Singapore — Civil Appeal No. 1 of 1976]

Tort — Negligence — Contributory negligence — Driver entering crossroads when lights were amber — Duty of other driver.

This was an appeal from the decision of D'Cotta J. The learned trial judge found that the appellant was negligent and wholly to blame for the accident as he has entered the crossroads when the lights were amber. The main ground of appeal was that the learned trial judge on the facts found by him erred in finding that there was no contributory negligence on the part of the respondent.

Held, allowing the appeal: (1) although the respondent was entitled to proceed and enter the junction immediately the lights turned green in his favour, he should in his own interest have kept a lookout for vehicles coming from the direction of the other road in case some vehicle which had properly entered the crossroads might still be passing across. If he had looked to his right when moving off from the stop line he would have seen the appellant's motor van coming and would have been able to take effective steps to avoid a collision. In all the circumstances, the respondent had contributed to the accident in this case;

(2) having regard to all the circumstances, four-fifths of the blame must rest on the appellant and one-fifth on the respondent.

Cases referred to:-

- (1) *Nance v. British Columbia Electric Railway Co. Ltd.* [1951] 2 All E.R. 448, 450.
- (2) *Joseph Eva Ltd. v. Reeves* [1938] 2 K.B. 393.
- (3) *Godsmark v. Knight Brothers (Brighton) Ltd.* The Times, May 12, 1960.

COURT OF APPEAL.

C. S. Wu for the appellant.

H. E. Cashin for the respondent.

Chua J. (delivering the judgment of the Court): On October 25, 1972, the respondent, Tan Huat Chan, riding a motor cycle, was involved in a collision with a motor van driven by the appellant at the junction of Geylang Road, Aljunied Road and Lorong 22. The respondent was riding the motor cycle along Geylang Road in the direction of the city. The appellant was proceeding in his motor van down Aljunied Road, his intention was, ultimately, having crossed the junction, to enter Lorong 22 on the opposite side of the junction.

As a result of the accident the respondent suffered severe injuries. He sued the appellant for damages

A and the High Court gave judgment in his favour. D'Cotta J., found that the appellant was wholly to blame for the accident. The parties had agreed damages at S\$85,000.

B As a result of the injuries sustained by the respondent in the accident he was not in a physical condition to give evidence and the only evidence given on behalf of the respondent as to the accident was given by an eye-witness, Mr. Lim Siong Chin (PW1). D'Cotta J., accepted the evidence of Mr. Lim and rejected the evidence of the appellant and his witness the van attendant.

C The main ground of appeal is that D'Cotta J., on the facts found by him, erred in finding that there was no contributory negligence on the part of the respondent.

D The facts are these. On October 25, 1972, Mr. Lim was riding his motor cycle along Geylang Road in the direction of the city. At the junction of Geylang Road, Aljunied Road and Lorong 22 the traffic lights were red and he stopped about 7 feet behind the respondent, who had stopped at the white line. To his right was a Mercedes car which had stopped at the stop line. As soon as the lights turned green the respondent moved forward and Mr. Lim followed suit. The Mercedes car on the right was turning very slowly into Aljunied Road. When the respondent had almost reached the centre of the intersection the appellant's motor van came from Aljunied Road crossing the intersection to get into Lorong 22 at a speed of about 40 m.p.h. and after passing the Mercedes car collided into the respondent and as a result of the impact the respondent and his motor cycle fell on the road.

F The finding of D'Cotta J., was this:

"The accident occurred as a result of the excessive speed at which the defendant was driving trying to beat the traffic lights at a very busy and dangerous intersection at the time of the day. Furthermore the defendant had failed to keep a proper lookout as a result of which he failed to observe the presence of the plaintiff on the road and this despite the fact that the plaintiff had almost reached the centre of the intersection."

G The contention of counsel for the appellant is that, notwithstanding the negligence of the appellant, the respondent also caused or contributed to his own injury and was part author of his own misfortune.

Contributory negligence when set up as a defence does not depend on any duty owed by the injured party to the party sued and all that is necessary to establish

such a defence is for the appellant to prove that the respondent did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury, (see *Nance v. British Columbia Electric Railway Co. Ltd.*,⁽¹⁾ per Viscount Simon at p. 450).

Counsel for the respondent relied entirely upon *Joseph Eva, Ltd. v. Reeves*.⁽²⁾ In that case it had been decided that one of the vehicles concerned had entered the crossroads against the red lights. It was held that the driver of a motor car who entered upon a crossroads with the lights in his favour was not under any obligation to assume that the driver of another vehicle might be entering the crossroads from left or right with the red lights against him.

In the present case, however, D'Cotta J., did not find that the appellant entered the crossroads with the red lights against him. The finding of the learned trial judge was that the appellant was "trying to beat the traffic lights" which means that the appellant entered the crossroads when the lights were amber.

We would respectfully adopt the observations of Barry J. in *Godsmark v. Knight Brothers (Brighton) Ltd.*⁽³⁾ That was a case where two drivers, both of whom had obeyed traffic lights in entering a road junction, were each held to be guilty of negligence. Dealing with the position of the defendant Barry J. said:

"Here, the lights had just turned green in favour of Mr. Knight (the defendant) and in his Lordship's opinion ... there was an obligation on Mr. Knight to see that no other vehicles had entered the crossroads while the lights were amber. ... Mr. Knight was bound to contemplate that some vehicle which had properly entered the crossroads might still be passing across, although the lights had changed to green; he was not entitled to cross in the way that he did. It was impossible to absolve him from blame."

We are of the view that although the respondent was entitled to proceed and enter the junction immediately the lights turned green in his favour, he should in his own interest have kept a lookout for vehicles coming from the direction of Aljunied Road in case some vehicle which had properly entered the crossroads might still be passing across. If he had looked to his right when moving off from the stop line he would have seen the appellant's motor van coming and would have been able to take effective steps to avoid a collision. We hold that, in all the circumstances prevailing, the respondent had contributed to this accident.

The bulk of the blame is undoubtedly on the appellant. Having regard to all the circumstances of the case, four-fifths of the blame must rest on the appellant and one-fifth on the respondent.

The appeal is allowed with costs.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

TALIB BIN HAJI HAMZAH v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.)
May 18, 1976]

[Singapore — Criminal Appeal No. 10 of 1975]

Criminal Law and Procedure — Arms offences — Armed gang robbery in which pistol was used — Offence under Arms Offences Act, 1973 — Onus on prosecution to show that accused may reasonably be presumed to have known that person who used the arm was carrying or had in his possession or under his control such arm — Defence of duress — Onus on accused — Penal Code, ss. 390, 395, 397 — Arms Offences Act, 1973, ss. 2 and 5.

Penal Code, ss. 390, 395 and 397 — Armed gang robbery.

This was an appeal from the conviction of the appellant by a court of two judges of two offences under section 5 of the Arms Offences Act, 1973. The evidence showed that the appellant was an accomplice in a robbery in which a pistol was used.

Held, dismissing the appeal: (1) to bring home a charge under section 5 of the Arms Offences Act, 1973, the prosecution must prove (a) that an offence was committed or an attempt to commit an offence was made; (b) that the accused was an accomplice in the said offence or attempted offence; (c) that the accused was present at the scene of the said offence or attempted offence; (d) that an arm was used within the meaning of section 2 of the Act by a person in the commission or attempted commission of the said offence; and (e) that the accused may reasonably be presumed to have known that the person who used the arm was carrying or had in his possession or under his control such arm;

(2) in this case on the first charge, on the evidence led by the prosecution, the trial judges were correct in their finding (a) that there were ample circumstances present from which they considered it reasonable to presume that the accused knew that the person who used the firearm was carrying it and (b) that the evidence showed that the gun was fired with the intention of causing physical injury and therefore used within the meaning of section 2 of the Act;

(3) on the second charge, the trial judges were correct in their finding that on the evidence tendered by the prosecution the appellant might reasonably be presumed to have known that the person who used the arm in the robbery was carrying such arm and that the arm was used in the robbery.

Cases referred to:-

(1) *Shyam Behari v. State of Uttar Pradesh* [1957] S.C. 320.

COURT OF CRIMINAL APPEAL.

Datuk David Marshall for the appellant.

Loh Lin Kok (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): At a trial before two judges of the High Court, the appellant was convicted and sentenced to death on each of the following two charges:—

1. That you Talib bin Haji Hamzah, on or about the 17th day of September 1974, at about 12.30 p.m. at the premises of Nam Yick Jewellers at No. 474 North Bridge Road, Singapore, were an accomplice to an armed gang robbery, an offence under sections 395 and 397 of the Penal Code (Chapter 103) committed by yourself, and four other persons unknown, in which robbery at least one arm, to wit, a pistol was used by at least one of the aforesaid persons when you were present at the scene of the said robbery and you may reasonably be presumed to have known that such person was carrying such arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973 (No. 61/73).

2. That you Talib bin Haji Hamzah are charged that on or about the 9th day of December 1974 at about 12.15 p.m. at the premises of Mandarin Jewellers (Pte) Ltd. at No. 117 Arab Street, Singapore, was an accomplice to an armed gang